

IN THE OREGON TAX COURT
MAGISTRATE DIVISION
Income Tax

THOMAS J. COMERFORD and PAMELA M. DIDENTE,)	
)	
Plaintiffs,)	TC-MD 021244A
)	
v.)	
)	
DEPARTMENT OF REVENUE, STATE OF OREGON,)	
)	
Defendant.)	DECISION

Plaintiffs have appealed the assessment, for the 2001 tax year, of a 5 percent penalty for a tax return received without full payment.

STATEMENT OF FACTS

The key piece of evidence in this case is a check Plaintiffs made naming the Department of Revenue as payee. The amount is \$31,886. It is dated April 15, 2002. The Department of Revenue contends it did not receive the check until April 30, 2002. Plaintiffs contend that in fact the check was mailed on April 15, 2002.

As support for its position the agency points to the fact that the face of the check bears the memo that it was for "540 NR". This is not an Oregon return, but a California return. The department speculates that the check was sent to California, and forwarded to the agency by the Franchise Tax Board. As support for this explanation the department testified that it received, on April 15, 2002, a check from Plaintiffs in the amount of \$340 attached to Plaintiff's Oregon return, but naming the Franchise Tax Board as payee. The department also told of its practice of posting checks to taxpayers' accounts on the date they are received.

For their part Plaintiffs believe that they mailed the \$31,886 check naming the

Department of Revenue as payee to the agency on April 15, 2002, and the notation “540 NR” it bears was an error.

ANALYSIS

The Department of Revenue cannot prove when it received the \$31,886 check, or whom it received it from. Plaintiffs cannot prove what was in the envelope it mailed to the Department of Revenue.

In this case, where the evidence is inconclusive, the court must make a decision based upon inferences. The decision of the court is that, in the confusion of April 15th, when multiple returns must be mailed to different states, Plaintiffs made a mistake, and put the wrong checks in the envelopes.

Oregon did receive a check made out to the Franchise Tax Board attached to the Oregon return. This leads to the inference that the Department of Revenue’s check must have accompanied the California return. The \$31,886 check’s notation that it was for a “540 NR” also points to the conclusion that check had been mailed to California. The date at which the Department of Revenue posted the check is consistent with the conclusion that the check had been forwarded by the Franchise Tax Board.

Is it right that Plaintiffs, who apparently committed the understandable error of sealing the wrong checks in envelopes at a time when many tasks had to be completed, should have to pay additional amounts in interest and penalty? The legislature, in setting out the penalty provisions, recognized that a variety of reasons account for a taxpayer’s failure to pay the tax when due. The lawmakers left it to the Department of Revenue to implement the penalty provisions. The court cannot say that the agency’s decision is inappropriate in this instance. The appeal is denied.

///

///

///

CONCLUSION

Now, therefore,

IT IS THE DECISION OF THIS COURT that no relief may be given.

Dated this _____ day of May, 2003.

SCOT A. SIDERAS
MAGISTRATE

IF YOU WANT TO APPEAL THIS DECISION, FILE A COMPLAINT IN THE REGULAR DIVISION OF THE OREGON TAX COURT, FOURTH FLOOR, 1241 STATE ST., SALEM, OR 97301-2563. YOUR COMPLAINT MUST BE SUBMITTED WITHIN 60 DAYS AFTER THE DATE OF THE DECISION OR THIS DECISION BECOMES FINAL AND CANNOT BE CHANGED.

THIS DOCUMENT WAS SIGNED BY MAGISTRATE SCOT A. SIDERAS ON MAY 21, 2003. THE COURT FILED THIS DOCUMENT ON MAY 21, 2003.